

**UNITED STATE OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION SEVEN**

WESTERN MICHIGAN AREA LOCAL 281,
AMERICAN POSTAL WORKERS UNION, AFL-
CIO (APWU) (UNITED STATES POSTAL SERVICE)

Respondent,

and

Case 07-CB-134861

SAMUEL J. NAVES, an Individual

Charging Party

**Reply To Counsel For The General Counsel's Response To Respondent's Motion For
Summary Judgment**

On November 12, 2014, Respondent filed a Motion For Summary Judgment asserting that the unfair labor charge was untimely filed and therefore, the complaint should be dismissed. Respondent's summary judgment motion was supported by the Confidential Witness Affidavit of Roy Bailey which evidenced that the Charging Party was informed sixteen months before his unfair labor charge that the union would not move the grievance over his termination forward to arbitration because Naves rejected the settlement offer that Respondent obtained. On November 19, 2014, the Counsel for the General Counsel filed its Response to the Motion For Summary Judgment asserting that allegations of the complaint were sufficient to create a triable issue of fact and therefore, the Motion should be denied. *See Response*, ¶¶ 2 & 3 (*"The Complaint alleges ..."*) and ¶4 (*"The General Counsel alleges..."*). The Response does not include a rebuttal affidavit to Mr. Bailey's affidavit testimony or any other affirmative evidence to defeat Respondent's Motion For Summary Judgment. As the General Counsel's response was

deficient under Fed.R.Civ.P 56(c) & (e) and for the following reasons, Respondent's Motion should be granted.

Fed.R.Civ.P 56(c) provides:

A party asserting that a fact cannot be or is genuinely disputed **must** support the assertion by:

(A) citing to particular parts of materials in the record, including depositions, documents, electronically stored information, affidavits or declarations, stipulations (including those made for purposes of the motion only), admissions, interrogatory answers, or other materials; or

(B) showing that the materials cited do not establish the absence or presence of a genuine dispute, or that an adverse party cannot produce admissible evidence to support the fact.

Emphasis added. "Allegations in a complaint are not evidence." *Nisenbaum v. Milwaukee*

Cnty., 333 F.3d 804, 810 (7th Cir. 2003). "[W]hen a properly supported motion for summary

judgment is made, the adverse party must set forth specific facts showing that there is a genuine

issue for trial." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 250 (1986) *footnotes and*

quotation omitted. The Supreme Court goes on to explain,

The movant has the burden of showing that there is no genuine issue of fact, but the plaintiff is not thereby relieved of his own burden of producing in turn evidence that would support a jury verdict. Rule 56(e) itself provides that a party opposing a properly supported motion for summary judgment **may not rest upon mere allegation or denials of his pleading**, but must set forth specific facts showing that there is a genuine issue for trial. Based on that Rule, [*First National Bank of Arizona v.*], *Cities Service*, [Co.] 391 U.S. [253], at 290, 88 S.Ct. [1575], at 1593, held that the plaintiff could not defeat the properly supported summary judgment motion of a defendant charged with a conspiracy without offering "any significant probative evidence tending to support the complaint."

Id. at 256 (*emphasis added*). Here, the Response of the General Counsel is inadequate under

Rule 56 to defeat Respondent's Motion For Summary Judgment given the lack of any probative


evidence rebutting Mr. Bailey's affidavit testimony that establishes that the Charging Party knew

or should have known 16 months before the unfair labor charge that Respondent was not going

to move the grievance forward. As such, summary judgment must be entered in Respondent's favor and the complaint dismissed.

Respectfully submitted,
WHEELER UPHAM, P.C.

Dated: November 19, 2014

By 
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CERTIFICATE OF SERVICE


The electronically filed Reply To Counsel For The General Counsel's Response To Respondent's Motion For Summary Judgment is being served on the following individuals in accordance with the service requirements of Section 102.114(i) of the Board's Rules and Regulations by serving the party by electronic mail (email). If the other party does not have the ability to receive electronic service, the other party will be notified by telephone of the substance of the transmitted document and a copy of the document shall be served by personal service no later than the next day, by overnight delivery service, or, with the permission of the party receiving the document, by facsimile transmission.

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Dated: November 19, 2014

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